

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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SISLYN DYKE

No. 07 Civ 3856(SCR)

Plaintiff,  
vs.

ANSWER TO AMENDED COMPLAINT

WALMART STORES, INC.,  
COTT BEVERAGES INC.  
JOHN DOE 1-10, XYZ, INC. 1-10:  
ten names being fictitious and  
unknown to the plaintiff, the person  
or parties intended being the persons  
or parties, if any,  
Defendant

TRIAL BY JURY DEMANDED

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PLEASE TAKE NOTICE, that defendants, WAL-MART STORES EAST, L.P. i/s/h/a  
WALMART STORES, INC., and COTT BEVERAGES INC., by and through their attorneys,  
COZEN O'CONNOR, hereby answers the plaintiff's Amended Complaint as follows:

FIRST: Defendants deny knowledge or information sufficient to form a belief as  
to the truth of the allegations contained in paragraph "1" Complaint and respectfully refer all  
questions of law to this Honorable Court.

SECOND: Defendants deny knowledge or information sufficient to form a belief as  
to the truth of the allegations contained in paragraph "2" Complaint and respectfully refer all  
questions of law to this Honorable Court.

THIRD: Defendants deny knowledge or information sufficient to form a belief as  
to the truth of the allegations contained in paragraph "3" of the Complaint.

FOURTH: Defendants admit the allegations contained in paragraph “4” of the Complaint.

FIFTH: Defendants deny the allegations contained in paragraph “5” of the Complaint.

SIXTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Complaint.

SEVENTH: Defendants deny the allegations contained in paragraph “7” of the Complaint.

EIGHTH: Defendants deny the allegations contained in paragraph “8” of the Complaint.

NINTH: Defendants deny the allegations contained in paragraph “9” of the Complaint.

TENTH: Defendants deny the allegations contained in paragraph “10” of the Complaint.

ELEVENTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the Complaint.

TWELFTH: Defendants denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the Complaint.

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION (BREACH OF WARRANTY)**

THIRTEENTH: Defendants repeat and reiterate each and every response to paragraphs “1” through “12” of the Complaint as if set forth more fully at length herein.

FOURTEENTH: Defendants deny the allegations contained in paragraph “14” of the Complaint.

FIFTEENTH: Defendants deny the allegations contained in paragraph “15” of the Complaint.

SIXTEENTH: Defendants deny the allegations contained in paragraph “16” of the Complaint.

SEVENTEENTH: Defendants deny the allegations contained in paragraph “17” of the Complaint.

EIGHTEENTH: Defendants deny the allegations contained in paragraph “18” of the Complaint.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION (STRICT LIABILITY)**

NINETEENTH: Defendants repeat and reiterate each and every response to paragraphs “1” through “18” of the Complaint as if set forth more fully at length herein.

TWENTIETH: Defendants deny the allegations contained in paragraph “20” of the Complaint.

TWENTY-FIRST: Defendants deny the allegations contained in paragraph "21" of the Complaint.

TWENTY-SECOND: Defendants deny the allegations contained in paragraph "22" of the Complaint.

TWENTY-THIRD: Defendants deny the allegations contained in paragraph "23" of the Complaint.

TWENTY-FOURTH: Defendants deny the allegations contained in paragraph "24" of the Complaint.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION**

TWENTY-FIFTH: Defendants repeat and reiterate each and every response to paragraphs "1" through "24" of the Complaint as if set forth more fully at length herein.

TWENTY-SIXTH: Defendants deny the allegations contained in paragraph "26" of the Complaint.

TWENTY-SEVENTH: Defendants deny the allegations contained in paragraph "27" of the Complaint.

TWENTY-EIGHTH: Defendants deny the allegations contained in paragraph "28" of the Complaint.

TWENTY-NINTH: Defendants deny the allegations contained in paragraph "29" of the Complaint.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION**

THIRTIETH: Defendants repeat and reiterate each and every response to paragraphs “1” through “29” of the Complaint as if set forth more fully at length herein.

THIRTY-FIRST: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “31” of the Complaint and respectfully refer all questions of law to this Honorable Court.

THIRTY-SECOND: Defendants deny the allegations contained in paragraph “32” of the Complaint.

THIRTY-THIRD: Defendants deny the allegations contained in paragraph “33” of the Complaint.

THIRTY-FOURTH: Defendants deny the allegations contained in paragraph “34” of the Complaint.

THIRTY-FIFTH: Defendants deny the allegations contained in paragraph “35” of the Complaint.

THIRTY-SIXTH: Defendants deny the allegations contained in paragraph “36” of the Complaint.

THIRTY-SEVENTH: Defendants deny the allegations contained in paragraph “37” of the Complaint.

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION**

THIRTY-EIGHTH: Defendants repeat and reiterate each and every response to paragraphs “1” through “37” of the Complaint as if set forth more fully at length herein.

THIRTY-NINTH: Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “39” of the Complaint and respectfully refer all questions of law to this Honorable Court.

FORTIETH: Defendants deny the allegations contained in paragraph “40” of the Complaint.

FORTY-FIRST: Defendants deny the allegations contained in paragraph “41” of the Complaint.

**DAMAGES**

FORTY-SECOND: Defendant repeats and reiterates each and every response to paragraphs “1” through “41” of the Complaint as if set forth more fully at length herein.

FORTY-THIRD: Defendants deny the allegations contained in paragraph “43” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

FORTY-FOURTH: If, in fact, plaintiff sustained injuries or damages as alleged in the Complaint, which damages and injuries are hereby expressly denied, said injuries and damages occurred as a result of the plaintiff’s own culpable conduct.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

FORTY-FIFTH: If, in fact, plaintiff sustained damages as alleged in the Complaint, such damages were caused, in whole or in part, by the comparative negligence of plaintiff, and such damages, which are hereby denied, should be diminished and reduced in the proportion to which the comparative negligence attributable to the plaintiff bears upon the culpability, if any, of all parties.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

FORTY-SIXTH: That in the event that any judgment or verdict is rendered in favor of plaintiff, this answering defendant is entitled to have such judgment or verdict reduced by the amount of any collateral payments made to the plaintiff for expenses and by the amount of all such payments plaintiff will receive in the future.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

FORTY-SEVENTH: That if the plaintiff sustained damages as alleged in the Complaint, such damages were the result of the culpable conduct, action or inaction, or breach of duty of other persons or entities, being or not being parties to this action, or their servants, agents or employees, over whom the defendant had no control and this defendant is blameless and free from any and all culpable conduct, negligent acts or breach of duty as to said plaintiff.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

FORTY-EIGHTH: The injuries alleged in the plaintiff's complaint were not caused by the negligence, carelessness and/or culpable conduct of the answering defendant, nor were the injuries proximately caused as a result of any acts or omissions of said defendant.

**AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE**

FORTY-NINTH: Plaintiffs' claims are precluded by the state of the art defense.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

FIFTIETH: The product was substantially altered, modified and/or changed, after it left the control of the defendants.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

FIFTY-FIRST: The incident, the injuries, and the damages complained of were caused by the unauthorized, unintended, improper and/or negligent use or abuse of the product and plaintiff's failure to exercise reasonable and ordinary care, caution or vigilance.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

FIFTY-SECOND: Defendants made no warranties to plaintiff.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

FIFTY-THIRD: To the extent warranties apply, defendants breached no warranties.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

FIFTY-FOURTH: To the extent warranties apply, the incident and all injuries and damages complained off occurred after all applicable warranties expired.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

FIFTY-FIFTH: To the extent warranties apply, such warranties were disclaimed by warranties accompanying the product at the time of sale.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

FIFTY-SIXTH: The product complained of was designed and manufactured in compliance with all applicable design and manufacturing specifications.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

FIFTY-SEVENTH: The product complained of contained adequate warnings and instructions.

**AS AND FOR AN FIFTEENTH AFFIRMATIVE DEFENSE**

FIFTY-EIGHTH: Plaintiff's damages were the result of a preexisting condition and are unrelated to any conduct of defendants.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

FIFTY-NINTH: Plaintiff's damages were the result of an indiosyncratic condition and are unrelated to any conduct of the defendants.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claim is barred by the applicable Statute of Limitations.

WHEREFORE, the defendant demands judgment dismissing the plaintiff's Complaint herein, together with fees, costs and disbursements in this action.

Dated: New York, New York  
September 5, 2007

Respectfully submitted,

COZEN O'CONNOR

By: \_\_\_\_\_  
Vincent P. Pozzuto (VP 7168)  
45 Broadway, 16<sup>th</sup> Floor  
New York, New York 10006

(212) 509-9400  
Attorneys for Defendants

TO: Shmuel Klein (SK7212)  
Law Office of Shmuel Klein, PC  
Attorneys for Plaintiff  
268 ROUTE 59  
Spring Valley, NY 10977  
845.425.2510

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6<sup>th</sup> day of September, 2007, a true and correct copy of the foregoing Answer has been sent via regular mail to:

Shmuel Klein (SK7212)  
Law Office of Shmuel Klein, PC  
Attorneys for Plaintiff  
268 ROUTE 59  
Spring Valley, NY 10977  
845.425.2510

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VINCENT P. POZZUTO (VP 7168)